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10 *Attorneys for Plaintiffs*
NUTRAMAX LABORATORIES, INC. and
11 NUTRAMAX LABORATORIES CONSUMER CARE, INC.

12
13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
14 **SOUTHERN DIVISION**

15 NUTRAMAX LABORATORIES,
INC. and
16 NUTRAMAX LABORATORIES
CONSUMER CARE, INC,

17 Plaintiffs,

18 v.

19 BODY WISE INTERNATIONAL,
INC.,

20 Defendant.
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Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

**NUTRAMAX LABORATORIES, INC. AND
NUTRAMAX LABORATORIES CONSUMER CARE, INC.
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Nutramax Laboratories, Inc. (“Nutramax Labs”) and Nutramax Laboratories Consumer Care, Inc. (“Nutramax Consumer Care”) (collectively, “Nutramax” or “Plaintiff”), through its undersigned counsel, files this Complaint against Defendant Body Wise International, Inc. (“Body Wise” or “Defendant”) on information and belief and alleges as follows:

PLAINTIFFS NUTRAMAX

1. Plaintiff Nutramax Labs is a South Carolina corporation, with its principal place of business in Lancaster, South Carolina. Nutramax Labs is the assignee of the Asserted Patents. Nutramax Labs, along with its wholly-owned subsidiaries, has spent decades and millions of dollars researching, developing, marketing, distributing, and selling, high-quality and well-respected nutritional supplement products.

2. Plaintiff Nutramax Consumer Care is a South Carolina corporation, with its principal place of business in Lancaster, South Carolina. Nutramax Consumer Care is an affiliate of Nutramax Labs and a licensee of the Asserted Patents. Nutramax Consumer Care, along with Nutramax Labs, has spent decades researching, developing, marketing, distributing, and selling, high-quality and well-respected nutritional supplement products.

1 **DEFENDANT BODY WISE**

2 3. Upon information and belief, Defendant Body Wise is a Delaware
3 corporation, duly authorized to do business in the State of California, with its
4 principal place of business at 17101 Armstrong Ave., Suite 101, Irvine,
5 California, 92614, in this judicial district. Upon information and belief,
6 Defendant Body Wise also conducts business at 2802 Dow Ave., Tustin,
7 California, 92780, also in this judicial district.

8 **JURISDICTION AND VENUE**

9 4. This is an action for patent infringement arising under the patent
10 laws of the United States, 35 U.S.C. § 1 *et seq.*, including §§ 271 and 281. This
11 Court has original jurisdiction over this patent infringement action pursuant to
12 28 U.S.C. §§ 1331 and 1338(a).

13 5. This Court has personal jurisdiction over Defendant and venue is
14 proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C.
15 § 1400(b). Moreover, Defendant maintains its principal place of business, as
16 well as its secondary place of business, in this judicial district. Therefore, Body
17 Wise resides in this judicial district. Body Wise is responsible for acts of
18 infringement occurring in the Central District of California, as alleged in this
19 Complaint, and has delivered or caused to be delivered infringing products or
20 services in the Central District of California.

THE ASSERTED PATENTS

6. Nutramax Labs is the assignee of United States Patent Number 6,797,289 (“the ’289 Patent”), titled “Use of Anabolic Agents, Anti-Catabolic Agents, Antioxidant Agents, and Analgesics for Protection, Treatment and Repair of Connective Tissues in Humans and Animals.” The United States Patent and Trademark Office (“USPTO”) duly and properly issued the ’289 Patent on September 28, 2004. A true and correct copy of the ’289 Patent is attached hereto as Exhibit A.

7. Nutramax Labs is the assignee of United States Patent Number 8,753,697 (“the ’697 Patent”), titled “Use of Anabolic Agents, Anti-Catabolic Agents, Antioxidant Agents, and Analgesics for Protection, Treatment and Repair of Connective Tissues in Humans and Animals.” The USPTO duly and properly issued the ’697 Patent on June 17, 2014. A true and correct copy of the ’697 Patent is attached hereto as Exhibit B.

8. Nutramax Labs is the owner of all right, title, and interest in the ’289 Patent and the ’697 Patent (collectively, “the Asserted Patents”), including all rights to pursue and collect damages for past, present, and future infringement of the Asserted Patents.

1 9. Nutramax Consumer Care is a licensee of the Asserted Patents and
2 has rights to pursue and collect damages for past, present, and future
3 infringement of the Asserted Patents.

4 **NATURE OF THE ACTION**

5 10. Since 1992, Nutramax has been developing high-quality and well-
6 respected nutritional supplement products for people and their pets.

7 11. During this time, Nutramax has been a leader in producing
8 products that contain, among other ingredients, combinations of
9 avocado/soybean unsaponifiables (“ASU”), glucosamine, and chondroitin
10 sulfate. The combination of ASU, glucosamine, and chondroitin sulfate are key
11 ingredients that may be used in the management of joint health. Nutramax has
12 dedicated years of research and invested millions of dollars to conduct research
13 demonstrating that that the combination of these ingredients inhibits mediators
14 involved in cartilage breakdown, and by doing so, helps to protect joint health.

15 12. Nutramax Labs has protected its innovative solutions in the joint
16 health field by obtaining several patents from the USPTO. In this action,
17 Nutramax asserts two of those patents, namely, the ’289 Patent and the ’697
18 Patent.

19 13. Body Wise now competes directly with Nutramax, supplying
20 products including the combination of ASU, glucosamine, and chondroitin
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1 sulfate to customers for the improvement of joint health, thereby diverting sales
2 to Body Wise that Nutramax would otherwise have made. Every such sale by
3 Body Wise is a direct loss to Nutramax of that sale and the consequent benefits
4 and profits.

5 14. As alleged in more detail below, Body Wise is directly infringing
6 claims of the Asserted Patents by making, using, offering for sale, and/or selling
7 products including the combination of ASU, glucosamine, and chondroitin
8 sulfate in the United States, including in this judicial district. Body Wise is
9 directly infringing claims of the Asserted Patents at least by selling or offering
10 to sell Nutramax's patented compositions in the United States, including in this
11 judicial district. Nutramax has filed this action to enjoin Body Wise's
12 infringement and to obtain fair compensation for Body Wise's violations of the
13 Patent Laws of the United States.

14 15. In addition to directly infringing the Asserted Patents pursuant to
15 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, or both,
16 Body Wise indirectly infringes at least Claim 21 of the '697 Patent by
17 instructing, directing, and/or requiring others, including its customers,
18 purchasers, users, and developers, to perform all or some of the steps of the
19 claimed method, either literally or under the doctrine of equivalents, or both.

FACTUAL ALLEGATIONS

16. Defendant Body Wise offers for sale its Joint Complete product in the United States, including in this judicial district, directly at least through its website <http://bodywise.com> and indirectly at least through Amazon.com. A true and correct copy of <http://bodywise.com/anti-aging/> is attached here as Exhibit C and a true and correct copy of the relevant page from Amazon (https://www.amazon.com/Complete-Supports-Flexibility-Health-Relieve/dp/B07BNXJWKK/ref=sr_1_50_a_it?ie=UTF8&qid=1542392379&sr=8-50&keywords=asu+supplement) is attached here as Exhibit D.

17. Body Wise advertises that the formulation for Joint Complete uses “nutritional building blocks for joints and connective tissue that also help lubricate and cushion joints” and that the formulation is “clinically proven to benefit joint health.” *See* Exhibit C; *see also* Exhibit D.

18. Body Wise’s label and advertising for Joint Complete represent that Joint Complete comprises, among other things, an amino sugar, glycosaminoglycans, and ASU.

SUPPLEMENT FACTS		
Serving Size 3 Tablets		
Servings Per Container 30		
	Amount per serving	%DV
Potassium (from Glucosamine Sulfate Potassium Chloride)	175 mg	5%
Glucosamine Sulfate	1500 mg	†
Methylsulfonylmethane (MSM)	500 mg	†
AvoVida™ (Avocado/Soy Unsaponifiables)	300 mg	†
Chondroitin Sulfate USP	150 mg	†
Bromelain (2400 GDU/GM)	100 mg	†
Boswellin® (<i>Boswellia serrata</i> Resin Extract, 20% Boswellic Acid)	75 mg	†
L-Proline USP/FCC	50 mg	†
White Willow Bark Extract (15% Salicin)	25 mg	†
Hyaluronic Acid	15 mg	†
† Daily Value not established.		

See Exhibit E.

19. Body Wise's label and advertising for Joint Complete further represent that the product comprises, among other things, 1500 mg of glucosamine sulfate (an amino sugar), 150 mg of chondroitin sulfate (a glycosaminoglycan), 15 mg of hyaluronic acid (a glycosaminoglycan), and 300 mg of ASU. *Id.*

20. Body Wise has sold and/or offered for sale, and is selling and/or offering for sale, products that comprise, among other things, an amino sugar, a glycosaminoglycan, glucosamine sulfate, chondroitin sulfate, hyaluronic acid, and ASU.

1 21. Upon information and belief, Body Wise's Joint Complete
2 products comprise, among other things, an amino sugar, a glycosaminoglycan,
3 and ASU. Upon information and belief, Defendant's Joint Complete products
4 comprise, among other things, glucosamine sulfate, chondroitin sulfate,
5 hyaluronic acid, and ASU.

6 22. Upon information and belief, Body Wise advertises Joint Complete
7 as comprising, and Joint Complete does comprise, a composition for the
8 treatment, repair, or prevention of damage to connective tissue.

9 23. Upon information and belief, Body Wise advertises Joint Complete
10 as comprising, and Joint Complete does comprise, a synergistic combination of
11 an amino sugar and ASU.

12 24. Upon information and belief, Body Wise advertises Joint Complete
13 as comprising, and Joint Complete does comprise, ASU and a
14 glycosaminoglycan, wherein the ASU and the glycosaminoglycan are present in
15 a synergistically effectible amount.

16 25. Upon information and belief, the combination of glucosamine
17 sulfate and ASU in Joint Complete falls within one or more claims of the '289
18 Patent.

1 26. Upon information and belief, the combination of chondroitin
2 sulfate and ASU in Joint Complete falls within one or more claims of the '697
3 Patent.

4 27. Upon information and belief, the combination of hyaluronic acid
5 and ASU in Joint Complete falls within one or more claims of the '697 Patent.

6 28. Nutramax provided Body Wise actual notice of its infringement of
7 the '289 Patent and the '697 Patent by letter dated September 10, 2018. *See*
8 Exhibit F. Body Wise has nonetheless continued to infringe the Asserted
9 Patents. Nutramax again provided Body Wise actual notice of its infringement
10 of the '289 Patent and the '697 Patent by letter dated October 4, 2018. *See*
11 Exhibit G. Body Wise has continued to infringe the Asserted Patents.

12 **FIRST CLAIM FOR DIRECT PATENT INFRINGEMENT**
13 **(The '289 Patent)**

14 29. Plaintiffs repeat, reallege, and incorporate by reference paragraphs
15 1-28 above as if fully set forth herein.

16 30. Defendant infringes one or more claims of the '289 Patent by
17 offering for sale, selling, and/or distributing its Joint Complete product, which is
18 advertised as comprising, and does comprise, a combination of an amino sugar
19 and ASU, a combination that falls within one or more claims of the '289 Patent.
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1. A composition for the treatment, repair or prevention of damage to connective tissue comprising:
a synergistic combination of an aminosugar and avocado/soybean unsaponifiables.

33. Defendant has no right or license to offer for sale, sell, or distribute a product that infringes the '289 Patent, and Plaintiffs have not consented to Defendant's infringement.

34. Plaintiffs have been damaged and irreparably harmed by Defendant's infringement of the '289 Patent. Plaintiffs will continue to suffer damages and irreparable harm unless this Court enjoins Defendant from further infringement.

35. Plaintiffs are informed and believe, and therefore allege, that Defendant has willfully infringed and continues to willfully infringe the '289 Patent and is thereby entitled to increased damages and attorneys' fees. Plaintiffs are also entitled to injunctive relief barring Defendant from further infringing the '289 Patent.

SECOND CLAIM FOR DIRECT PATENT INFRINGEMENT
(The '697 Patent)

36. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1-35 above as if fully set forth herein.

37. Defendant infringes one or more claims of the '697 Patent by offering for sale, selling, and/or distributing its Joint Complete product, which is advertised as comprising, and does comprise, a combination of glycosaminoglycan and ASU, a combination that falls within one or more claims of the '697 Patent.

38. For example, Claim 1 of the '697 patent recites:

1. A composition comprising avocado/soybean unsaponifiables (ASU) and a glycosaminoglycan, wherein the ASU and the glycosaminoglycan are present in a synergistically effective amounts.

39. Upon information and belief, as set forth above, Defendant's Joint Complete product is a composition that includes ASU and a glycosaminoglycan, wherein the ASU and the glycosaminoglycan are present in synergistically effective amounts.

40. Defendant has no right or license to offer for sale, sell, or distribute a product that infringes the '697 Patent, and Plaintiffs have not consented to Defendant's infringement.

1 41. Plaintiffs have been damaged and irreparably harmed by
2 Defendant's infringement of the '697 Patent. Plaintiffs will continue to suffer
3 damages and irreparable harm unless this Court enjoins Defendant from further
4 infringement.

5 42. Plaintiffs are informed and believe, and therefore allege, that
6 Defendant has willfully infringed and continues to willfully infringe the '697
7 Patent and is thereby entitled to increased damages and attorneys' fees.
8 Plaintiffs are also entitled to injunctive relief barring Defendant from further
9 infringing the '697 Patent.

10 **THIRD CLAIM FOR DIRECT PATENT INFRINGEMENT**
11 **(Claim 21 of The '697 Patent)**

12 43. Plaintiffs repeat, reallege, and incorporate by reference paragraphs
13 1-42 above as if fully set forth herein.

14 44. Defendant has induced and continues to induce infringement of at
15 least Claim 21 of the '697 Patent under 35 U.S.C. § 271(b).

16 45. In addition to directly infringing at least one claim of the '697
17 Patent, Defendant indirectly infringes at least Claim 21 of the '697 Patent
18 pursuant to 35 U.S.C. § 271(b) by instructing, directing and/or requiring others,
19 including customers, purchasers, users and developers, to perform some of the
20 steps of the method claim, either literally or under the doctrine of equivalents,
21 of the '697 Patent through the sales of its Joint Complete product, where all the
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1 steps of the method claims are performed by either Defendant or its customers,
2 purchasers, users and developers, or some combination thereof. Defendant
3 knew or was willfully blind to the fact that it was inducing others, including
4 customers, purchasers, users and developers, to infringe by practicing, either
5 themselves or in conjunction with Defendant, one or more method claims of the
6 '697 Patent, including Claim 21, through sales of its Joint Complete product.

7 46. For example, Claim 21 of the '697 patent recites:

8 21. A method of treating or repairing damage to
9 connective tissue in humans and animals comprising
10 administering a composition according to claim 1 to a
11 human or animal in need thereof.

12 47. Defendant knowingly and actively aided and abetted the direct
13 infringement of the '697 Patent by instructing and encouraging its customers,
14 purchasers, users, and developers to use its Joint Complete product. Such
15 instructions and encouragement included, but are not limited to, advising third
16 parties to use the Joint Complete product in an infringing manner, providing a
17 mechanism through which third parties may infringe the '697 Patent, by
18 advertising and promoting the use of the Joint Complete product in an
19 infringing manner, and distributing guidelines and instructions to third parties
20 on how to use the Joint Complete product in an infringing manner.

21 48. Body Wise updates and maintain a website with its advertisements
22 which cover in-depth aspects of purchasing and uses for Defendant's offerings.

1 *See, e.g.*, Exhibit C. Body Wise also maintains a third-party website with its
2 advertisements which cover in-depth aspect for purchasing and uses for
3 Defendant's offerings. *See, e.g.*, Exhibit D. Through its websites, Body Wise
4 advertises and promotes the use of the Joint Complete product in an infringing
5 manner.

6 **JURY DEMAND**

7 49. Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the
8 Federal Rules of Civil Procedure.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs respectfully request that this Court:

- 11 A. Enter a judgment that Defendant has infringed and is infringing
12 one or more claims of the '289 Patent and the '697 Patent;
- 13 B. Enter a judgment that Defendant has induced infringement and is
14 inducing infringing of one or more claims of the '697 Patent;
- 15 C. Award Plaintiffs damages against Defendant pursuant to 35 U.S.C.
16 § 284 that are adequate to compensate Plaintiffs for Defendant's
17 infringement of the Asserted Patents, but in no event less than a
18 reasonable royalty for the use made of the claimed inventions,
19 together with interest and costs;
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- 1 D. Permanently enjoin, under 35 U.S.C. § 283, Defendant, its officers,
2 agents, servants, employees, attorneys, successors, and assigns and
3 all other persons in active concert or participation with any of them
4 from infringing the Asserted Patents;
- 5 E. Permanently enjoin, under 35 U.S.C. § 283, Defendant, its officers,
6 agents, servants, employees, attorneys, successors, and assigns and
7 all other persons in active concert or participation with any of them
8 from offering for sale, selling, and/or distributing the product Joint
9 Complete within the United States;
- 10 F. Declare that Defendant's infringement was and is willful from the
11 time it became aware of the infringing nature of its product and
12 awarding treble damages for the period of such willful infringement
13 of the Asserted Patents, pursuant to 35 U.S.C. § 284;
- 14 G. Declare this an exceptional case within the meaning of 35 U.S.C.
15 § 285 and award Plaintiffs their reasonable attorneys' fees, costs,
16 and expenses;
- 17 H. An accounting of all infringing sales and revenues, together with
18 post judgment interest and prejudgment interest from the first date
19 of infringement, of the Asserted Patents; and
- 20 I. Grant such other relief as the Court may deem just and proper.

1
2 Dated: November 20, 2018

Respectfully submitted,

3 By: /s/ Brenton R. Babcock

4 Brenton R. Babcock

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